



JULIE LASSA

STATE SENATOR

Senate Bill 14 Testimony
Senate Committee on
Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
February 5, 2009
411 South
State Capitol

Chairwoman Taylor and Committee Members,

Thank you for allowing me the opportunity to provide testimony in favor of Senate Bill 14, which, at the request of Milwaukee County District Attorney John Chisholm, will change the definition of "sexual intercourse" when considering the crime of incest. I am passing around written testimony on behalf of Representative Cullen, Milwaukee County District Attorney John Chisholm, and Attorney General J.B. Van Hollen.

In a very disturbing case which led to this suggested change, a man was arrested for sexually assaulting his developmentally disabled adult daughter. In the process of bringing charges against the man, the crime of incest was included.

However, under current law pertaining to incest involving adults, only vulvar penetration can be considered "sexual intercourse." Elsewhere in current law, sexual intercourse is defined in terms that go beyond vulvar penetration and would have been applicable in this particular case – except for the fact the victim was an adult child of the accused.

Because of the limitations under current law, the man accused of improper sexual relations with his adult daughter could not be found guilty of incest because there was no vulvar penetration involved. In this case, although there was sexual assault, there was no incest as defined under current law.

Senate Bill 14 changes the definition for sexual intercourse for the crime of incest by cross-referencing the definition found elsewhere in current law, specifically the definition of "sexual intercourse" found in s. 948.01. The bill simply makes this definition uniform for the purposes of defining incest under s. 944.06.

This legislation passed by a voice vote in the Senate last session.

Again, thank you for the opportunity to share my support of Senate Bill 14. I would be happy to answer any questions.



DAVID CULLEN

STATE REPRESENTATIVE

Testimony of Rep. David Cullen in Support of SB 14

Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing

February 5, 2009

Senator Taylor and members of the committee, thank you for your consideration today of 2009 Senate Bill 14, relating to the definition of sexual intercourse for the crime of incest. I strongly urge your approval and timely executive action. I apologize for not being able to attend due to a Democratic Caucus meeting to be held outside of Madison this afternoon.

I have provided a letter in support of the proposal from Milwaukee County District Attorney John Chisholm, as well as a letter of support from Attorney General JB Van Hollen.

Milwaukee County District Attorney Chisholm approached me about drafting the bill last session in response to a very unfortunate case his office attempted to prosecute. The case involved a man who was sexually assaulting his developmentally disabled adult daughter.

The man's actions in this case were abhorrent – and discretion won't allow me to discuss the details. However, what he did to his daughter was wrong and charges were brought against him, including a charge of incest.

In the course of trying the case, the district attorney's office pointed to the man's actions and attempted to convince the jury that what he had done amounted to, among other things, incest.

However, there is a shortcoming in our current law against incest that Senate Bill 14 attempts to address.

When the charge of incest involving the actions of two adults is prosecuted, what s. 944.06 requires is "marriage" or "nonmarital sexual intercourse." However, the definition of "sexual intercourse" for s. 944.06 is a cross-reference to s. 939.22. In s. 939.22(36), this is the definition of sexual intercourse: "*sexual intercourse requires only vulvar penetration and does not require emission.*"

What the man in this case did to his adult daughter, who was clearly the victim of an assault, did not entail vulvar penetration and because of this, and given the limitations of the definition of "incest" in s. 944.06, the jury could not find him guilty of "incest." To make matters worse, the man was later found innocent of all charges against him.

We do not have similar shortcomings in current law when charges of incest involve a child victim. Under s. 948.06, the crime of incest with a child uses a definition for "sexual intercourse" found in s. 948.01(6):

"Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part or a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required."

Again, s. 948.06 only covers incest with a child. Senate Bill 14 simply expands what constitutes the crime of "incest" as found in s. 944.06 by using the definition of "sexual intercourse" found in s. 948.01(6).

We do not increase the penalty for incest in 944.06, which is currently a Class F felony. [s. 939.50(3)(f) *Class F felony: a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.*]

All we do in the bill is cross reference a more comprehensive definition of "sexual intercourse" that is already in current law...a definition which would have covered the man's actions against his adult daughter in the case which prompted this legislation.

Again, thank you for considering my written testimony today in support of Senate Bill 14.



DAVID CULLEN

STATE REPRESENTATIVE

Testimony of Rep. David Cullen in Support of SB 14

Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing

February 5, 2009

Senator Taylor and members of the committee, thank you for your consideration today of 2009 Senate Bill 14, relating to the definition of sexual intercourse for the crime of incest. I strongly urge your approval and timely executive action. I apologize for not being able to attend due to a Democratic Caucus meeting to be held outside of Madison this afternoon.

I have provided a letter in support of the proposal from Milwaukee County District Attorney John Chisholm, as well as a letter of support from Attorney General JB Van Hollen.

Milwaukee County District Attorney Chisholm approached me about drafting the bill last session in response to a very unfortunate case his office attempted to prosecute. The case involved a man who was sexually assaulting his developmentally disabled adult daughter.

The man's actions in this case were abhorrent – and discretion won't allow me to discuss the details. However, what he did to his daughter was wrong and charges were brought against him, including a charge of incest.

In the course of trying the case, the district attorney's office pointed to the man's actions and attempted to convince the jury that what he had done amounted to, among other things, incest.

However, there is a shortcoming in our current law against incest that Senate Bill 14 attempts to address.

When the charge of incest involving the actions of two adults is prosecuted, what s. 944.06 requires is "marriage" or "nonmarital sexual intercourse." However, the definition of "sexual intercourse" for s. 944.06 is a cross-reference to s. 939.22. In s. 939.22(36), this is the definition of sexual intercourse: "*sexual intercourse requires only vulvar penetration and does not require emission.*"

What the man in this case did to his adult daughter, who was clearly the victim of an assault, did not entail vulvar penetration and because of this, and given the limitations of the definition of "incest" in s. 944.06, the jury could not find him guilty of "incest." To make matters worse, the man was later found innocent of all charges against him.

We do not have similar shortcomings in current law when charges of incest involve a child victim. Under s. 948.06, the crime of incest with a child uses a definition for "sexual intercourse" found in s. 948.01(6):

"Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part or a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required."

Again, s. 948.06 only covers incest with a child. Senate Bill 14 simply expands what constitutes the crime of "incest" as found in s. 944.06 by using the definition of "sexual intercourse" found in s. 948.01(6).

We do not increase the penalty for incest in 944.06, which is currently a Class F felony. [s. 939.50(3)(f) *Class F felony: a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.*]

All we do in the bill is cross reference a more comprehensive definition of "sexual intercourse" that is already in current law...a definition which would have covered the man's actions against his adult daughter in the case which prompted this legislation.

Again, thank you for considering my written testimony today in support of Senate Bill 14.



OFFICE OF THE DISTRICT ATTORNEY
Milwaukee County

JOHN T. CHISHOLM • District Attorney

Chief Deputy Kent L. Lovern, Deputies James J. Martin, Patrick J. Kenney, Lovell Johnson, Jr., Jeffrey J. Altenburg

February 4, 2009

Representative David Cullen
State of Wisconsin

Re: Legislation to Amend Wis. Stat. sec. 944.06, Incest

Dear Rep. Cullen:

Under current Wisconsin law, Wis. Stat. sec. 944.06 (Incest), it is a crime for an adult to have "sexual intercourse" with another adult he or she knows is a blood relative and such relative is related in a degree within which the marriage of the parties is prohibited.

"Sexual intercourse," for the crime of incest, means "penetration of the genital organ of the female by the penis of the male." This definition is found in Wis. Stat. sec. 939.22(36).

The definition of "sexual intercourse" in sec. 939.22(36) is not consistent with the definitions of "sexual intercourse" found in the sexual assault statute, Wis. Stat. sec. 940.225(5)(c), and the child sexual assault statutes, Wis. Stat. sec. 948.01(6). For purposes of those crimes, "sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse.

Under current Wisconsin law, if two adults, who are blood relatives to a degree within which marriage is prohibited, engage in anal intercourse, cunnilingus, or fellatio, the crime of Incest has not been committed. I am of the opinion that the definition of "sexual intercourse" in 939.22(36) should be amended to include "cunnilingus, fellatio or anal intercourse." Such an amendment would make the definition of "sexual intercourse" consistent throughout the criminal statutes and would criminalize the above described behavior which, I believe, our community is not willing to condone.

Thank you,

Sincerely yours,

John Chisholm
District Attorney

Thomas A. Schulz
Alexander G. Sidonarz
William J. Molitor
Donald S. Jackson
Gale C. Shultz
Gary D. Mahkam
David Robles
Peg Tarrant
Douglas J. Simpson
Cynthia G. Brown
Norman A. Gahn
Stephanie Cioris Rodstein
Steven H. Glavin
Mark S. Willert
Linda Johnson
John M. Stoller
Thomas L. Potter
David Fells
Rayann Chandler Seychinski
Carole Hanchader
Kenneth R. Berg
Warren D. Zier
Timothy J. Cotter
Carol Berry Crowley
Steven V. Licks
Brad Vorpani
Paul Tiffin
Miriam S. Falk
Phyllis M. DeCarvalho
Dennis P. Murphy
Bruce J. Landgraf
Doris J. Stingsi
David M. Lorman
Janet C. Probasiewicz
Dawn L. Heard
Patricia A. McGowan
Diane E. Parthum
Karen A. Loebel
Ronald S. Dague
Lori S. Kornblum
Karlina O'Byrne
Marie Dorsey
James W. Fitch
Kurt B. Bonkay
James C. Griffin
William P. Pipp
Joanne L. Hardike
Christopher A. Liegel
Megan P. Connolly
Laura A. Orville
Shawn Pompe
Kevin R. Shomin
Deth D. Zingel
Karen A. Vespelec
Mark A. Sanders
Paul C. Dostinsky
David T. Malone
Kelly L. Hedge
Rachael Stenzel
Bruce W. Backer
Michael T. Mahoney
Mary M. Sawinski
Kathryn K. Samer
Jeffrey P. Grupp
Daniel J. Gabbler
Sara P. Scullen
T. Christopher Dae
Jacob D. Corr
Joy Hammond
Katherine F. Kucharski
Elizabeth Mueller
Grant J. Huebner
Stephen Edward Hollen
Michelle Ackerman Hexas
Jennifer K. Rhodes
Gabe Stirling
Zach Wilkney
Rebecca A. Kiefer
Matthew J. Tontomon
Kathryn L. Childs
Carah Healy
Mary C. Thelen
Gilbert Ufer
Anthony White
Antoni Apollo
Nicola D. Loeb
Erin Karshan
Lucy Krenfolt
Erin Olsson
Monica J. Hall
Michael J. Lonski
Paul M. Meuer
Sara Beth Lewis
Aaron C. Hall
Jenni Spies
David M. Stegall
Amanda Kinkewold
Benjamin Wesson
Kenee Hadriz
Karl P. Hayes
Jessica Zolney
Holly L. Bunch
Jacob A. Maylan
Heather M. Plack
Megan M. Williamson
Dewey B. Martin
Sarah Eborio
Jennifer J. Kopp
Daniel M. Adams
Christopher J. Ludwig
Kimberly D. Sikorski
Nicole J. Sheldon
Dex C. Odom
Gabrielle K. Baumann
Maureen A. Abwell
Christopher W. Rawatthome
Rachel E. Setzler
Andres B. Raymond
Jennifer L. Hanson
Patricia L. Daugherty
Adam T. Gerol
Markus L. Santiago
Meghan C. Underberg
Jon Neuleib



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

February 5, 2009

TO: The Honorable Members of the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing

FR: Attorney General J.B. Van Hollen

RE: 2009 Senate Bill 14

Dear Senators:

I am writing to express my support of 2009 Senate Bill 14, relating to the definition of sexual intercourse for the crime of incest. This bill is necessary to prohibit incest involving male victims.

Under § 944.06, Wisconsin's Incest Statute, whoever marries or has nonmarital sexual intercourse with certain blood relatives is guilty of a Class F felony. However, § 944 utilizes the definitions found in § 939.22. Under § 939.22 (36) the definition of "sexual intercourse" reads: "Sexual intercourse" requires only vulvar penetration and does not require emission."

Senate Bill 14 amends § 944.06 to eliminate disparate treatment of female and male victims. It does this by adopting the definition of "sexual intercourse" found in § 948.01. Section 948.01(6) provides, "Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required."

The problem with the current language of § 944.06 is exemplified by a recent case from Southeast Wisconsin. In 2007, the Racine County District Attorney charged two brothers with incest. The brothers argued that § 944.06 does not apply to their conduct because its terms refer only to female anatomy. Adopting their position and applying the statute's plain language, the Racine County Circuit Judge dismissed the criminal complaint against the brothers. The Racine County District Attorney then asked the Department of Justice to appeal. Upon review, the department felt it had no choice but to decline the request to appeal. Undoubtedly, a court of appeals would have concluded that the plain language of §§ 944.06 and 939.22 controlled and under existing statutes, only females can be victims of incest.

Though that case can not be reversed, SB 14 will correct the likely unintentional distinction between female and male victims of incest so that, in the future, such acts can be charged under the Incest Statute. I urge you to pass SB 14. Thank you.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

February 5, 2009

TO: The Honorable Members of the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing

FR: Attorney General J.B. Van Hollen

RE: 2009 Senate Bill 14

Dear Senators:

I am writing to express my support of 2009 Senate Bill 14, relating to the definition of sexual intercourse for the crime of incest. This bill is necessary to prohibit incest involving male victims.

Under § 944.06, Wisconsin's Incest Statute, whoever marries or has nonmarital sexual intercourse with certain blood relatives is guilty of a Class F felony. However, § 944 utilizes the definitions found in § 939.22. Under § 939.22 (36) the definition of "sexual intercourse" reads: "'Sexual intercourse' requires only vulvar penetration and does not require emission."

Senate Bill 14 amends § 944.06 to eliminate disparate treatment of female and male victims. It does this by adopting the definition of "sexual intercourse" found in § 948.01. Section 948.01(6) provides, "'Sexual intercourse' means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required."

The problem with the current language of § 944.06 is exemplified by a recent case from Southeast Wisconsin. In 2007, the Racine County District Attorney charged two brothers with incest. The brothers argued that § 944.06 does not apply to their conduct because its terms refer only to female anatomy. Adopting their position and applying the statute's plain language, the Racine County Circuit Judge dismissed the criminal complaint against the brothers. The Racine County District Attorney then asked the Department of Justice to appeal. Upon review, the department felt it had no choice but to decline the request to appeal. Undoubtedly, a court of appeals would have concluded that the plain language of §§ 944.06 and 939.22 controlled and under existing statutes, only females can be victims of incest.

Though that case can not be reversed, SB 14 will correct the likely unintentional distinction between female and male victims of incest so that, in the future, such acts can be charged under the Incest Statute. I urge you to pass SB 14. Thank you.